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Nancy Foran

Dahli Gray

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## International

# Florida's Sales and Use Tax

## Implications for Multinational Corporations

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By Nancy Foran and Dahli Gray

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Editor: Dahli Gray, University of Notre Dame, Notre Dame, IN 46556

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Multinational corporations (MNCs), companies whose activities encompass more than one country, are subject to taxes imposed by the various states. Each state must identify the extent of MNCs' activities within its borders. Some states use the arm's length method and tax only those activities that occur within the state. However, other states utilize the unitary apportionment method (UAM).

### The Unitary Apportionment Method

There are two aspects of the unitary apportionment method. One is the determination of the scope of a unitary business, by definition a group of corporations that are owned and operated as a single unit. The second aspect is the apportionment of the tax base. The apportioned tax base is determined by multiplying the relevant tax base of the entire firm by the percentage of the apportionment factors that are attributable to the taxing state, those factors most commonly being sales, property and payroll. The UAM is not restricted in reach to in-state activities. Rather, it allows states who use this method to tax a share of the tax base of a group of affiliated businesses. Thus, MNCs with

subsidiaries operating in a "unitary" state would be subject to tax on an apportioned share of their worldwide operations.

The UAM has been used to calculate the income tax liability of MNCs for many years and has been the source of considerable controversy. Recently, this approach was applied to the calculation of the sales and use tax in Florida.

### Florida's Sales and Use Tax

The Florida sales and use tax is a tax imposed on the retail sales, rentals, consumption, distribution, storage and use of tangible personal property; the sale or use of any service; mail order sales to purchasers in Florida; advertising, admissions, telegraph messages and telecommunications services; and the rental of real property or living accommodations for a limited period.

The Florida sales and use tax is unique in its broad application to services industries such as law, accounting, advertising, data processing, transportation, communication and construction. Services are subject to tax when they are transferred to, provided to or rendered for any form of consideration or when the benefits of services are consumed or enjoyed within the state. The deter-

mination of where the service is enjoyed is dependent upon the type of service provided and the relation of the service to property.

Services related to interstate or international transportation are included to the extent of one-half of the cost of the service if the point of origin or termination of the service is in Florida. Services related to advertising are apportioned based upon the proportion of market coverage within Florida to the total market coverage. For printed publications, this market coverage is the average circulation within the geographic area of distribution. For broadcast media, the coverage is the population within the signal reception. All other services are apportioned according to the relation of the service to certain types of property.

Service related to real property is considered to be enjoyed where the property is located. Service related to specific tangible personal property is presumed to be enjoyed where the property is used for business purposes. Services related to the purchaser's sales in a local market are deemed to be enjoyed in the local market. All other services are apportioned according to a three-factor formula which is similar to the worldwide unitary apportionment formula.

### Florida's Application of the Worldwide Unitary Apportionment Method to a Sales and Use Tax

Florida's three-factor apportionment formula multiplies the entire price of the service by a fraction representing a ratio of the firm's Florida property, payroll and sales to those factors "everywhere." The apportioned tax base is then subject to the 5% sales and use tax. This formula double-weights the sales factor. However, if either the property or payroll factor is insignificant or zero, the sales factor is .67 and the remaining significant factor is .33. The term "everywhere" is defined to include all U.S. states, territories and possessions, the District of Columbia, Puerto Rico, and any foreign country. Except for the double-weighting of the sales factor, the apportionment formula is the same as that used for the worldwide unitary apportionment of income.

The sales and use tax applies to affiliated groups. The concept of an affiliated group is very similar to that of a unitary business. An affiliated group is a group of corporations, as defined in Internal Revenue Code (IRC) Section 1504(a), whose members are includable under IRC Section 1504(b), (c) or (d) and are eligi-

ble to file a Federal corporate consolidated tax return. However, members (other than the parent corporation) without tax nexus in Florida and with business activities unrelated to the business activities of other group members may be excluded from the affiliated group. An affiliated group must include the property, payroll

and sales of the entire group, but services performed between members of an affiliated group are exempt from the tax. If a group elects to exclude a related corporation from the group, then sales of services between the excluded members and other members are taxable.

## An Example

The example in the sidebar illustrates the computation of the Florida sales and use tax.

## Sales of Services for Resale

Sales of services for resale are not subject to the sales and use tax. A sale of a service is considered a sale for resale if the purchaser acts as an intermediary for a client and does not use or consume the service and if the value of the service purchased is separately stated in the subsequent sale. If both of these conditions are not met, the sales and use tax is levied on the purchaser of the service. In addition, the tax will be levied on the purchaser's services, which would include the resold services and any related sales and use tax. The following example illustrates this situation. If an accountant used a computerized tax return preparation service, a sales tax would be levied on that service. When the accountant then billed a client for services, a sales and use tax would be levied on the accountant's full charge. Because the accountant's bill would include the cost of the tax preparation fee and its related sales and use tax, the fee would be subject to tax twice and the tax itself would be subject to tax.

## Collection and Remittance of the Tax

The collection and remittance of the sales and use tax is dependent upon the nature of the purchaser of the service or property. A sales tax is normally assessed on the purchaser but remitted by the seller. However, Florida has provided that multistate businesses with tax nexus in Florida may obtain an exempt purchase permit enabling them to self-accrue any sales tax due on services that they purchase and to remit the tax due. Further, businesses without tax nexus may also obtain exempt purchase permits, providing they agree to al-

Worldwide Sales Corporation is incorporated in France. It has sales offices in France and Florida. Worldwide Sales purchases computer services from a company outside of Florida for \$20,000. These services benefit the entire corporation. Sales, property and payroll for the prior year were:

	Florida	Everywhere
Sales	\$20,000,000	\$100,000,000
Payroll	480,000	2,400,000
Property	2,800,000	14,000,000

The Florida use tax would be computed as follows:

$$\begin{aligned}
 1. \text{ Sales Factor} &= \frac{\text{Florida Sales}}{\text{Sales Everywhere}} \times \text{Factor Weight} \\
 &= \frac{\$20,000,000}{\$100,000,000} \times .50 \\
 &= .100000
 \end{aligned}$$

$$\begin{aligned}
 2. \text{ Payroll Factor} &= \frac{\text{Florida Payroll}}{\text{Payroll Everywhere}} \times \text{Factor Weight} \\
 &= \frac{\$480,000}{\$2,400,000} \times .25 \\
 &= .050000
 \end{aligned}$$

$$\begin{aligned}
 3. \text{ Property Factor} &= \frac{\text{Florida Property}}{\text{Property Everywhere}} \times \text{Factor Weight} \\
 &= \frac{\$2,800,000}{\$15,000,000} \times .25 \\
 &= .046667
 \end{aligned}$$

$$\begin{aligned}
 4. \text{ Apportionment Factor} &= \\
 &\quad \text{Sales Factor} \quad .100000 \\
 &\quad + \text{Payroll Factor} \quad .050000 \\
 &\quad + \text{Property Factor} \quad .046667 \\
 &\quad \underline{\underline{.196667}}
 \end{aligned}$$

$$\begin{aligned}
 5. \text{ Apportioned Tax Base} &= \\
 &= \text{Price of Service} \times \text{Apportionment Factor} \\
 &= \$20,000 \times .196667 \\
 &= \underline{\underline{\$3,933.34}}
 \end{aligned}$$

$$\begin{aligned}
 6. \text{ Florida Use Tax} &= \\
 &= \text{Apportioned Tax Base} \times \text{Tax Rate} \\
 &= \$3,933.34 \times .05 \\
 &= \underline{\underline{\$196.67}}
 \end{aligned}$$

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low the state to enforce the sales tax law. An annual supplementary tax return summarizing the multistate purchaser's purchases and sales is required. The return must include a final calculation of taxes using the three-factor apportionment method described above.

### Conclusion

The reduction in federal aid for state governments, the declining profitability of key industries, and the increase in population have made it necessary for states to search for new sources of revenue. Although the service sector is the fastest growing segment of the economy, it has not been widely taxed. Florida has chosen to increase state

revenues by expanding its sales tax base to include the sale and use of services and by utilizing the worldwide unitary apportionment method. The extension of the sales tax to services provided outside the state but apportioned among affiliated groups based upon worldwide values is unique.

Even though Florida's adoption of the UAM for the calculation of sales and use tax is unique, what is of particular interest to MNCs is whether a trend may be established to involve worldwide values of MNCs in the calculation of taxes by other state and local governmental units. MNCs must carefully monitor state activities to determine the implications of all new taxes. □



**Nancy J. Foran, Ph.D., CPA**, is an Assistant Professor of Accounting at Wichita State University. She received her Ph.D. from Oklahoma State University. She is a member of the AICPA, AAA, American Taxation Association, Academy of International Business, and Institute of Internal Auditors. She has spoken to various academic and professional groups and has published in a number of professional journals.



**Dahli Gray**, Peat Marwick Research Fellow of the University of Notre Dame, is a member of AWS CPA and has published previously in *The Woman CPA* journal as well as in the *Journal of Accounting Research*, *The Journal of Accountancy*, *The International Journal of Accounting Education & Research*, *Management Accounting*, *The CPA Journal* and other professional publications. Dr. Gray, CPA, CMA, is a member of several professional organizations, including the IAAER, NAA, AICPA, AID, and AAA.